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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. 15 CR 607(WHP)

5 JAMES CAPERS, et. al.,

6 Defendants.

7 -----x

8 April 13, 2016
2:12 p.m.

9 Before:

10 HON. WILLIAM H. PAULEY III,
District Judge

11 APPEARANCES

12 PREET BHARARA

13 United States Attorney for the
Southern District of New York

14 BY: JESSICA LONERGAN

Assistant United States Attorney

15 ANDREW G. PATEL

16 Attorney for Defendant James Capers

17 NATALI J.H. TODD

Attorney for Defendant Tommy Brown

18 SARAH KUNSTLER

19 Attorney for Defendant Marquise Rochester

20 KELLEY SHARKEY

Attorney for Defendant Christian McKnight

21 BY: EDWARD WALDREN

22 DAVID TOUGER

Attorney for Defendant Unique Christopher

23 THOMAS F.X. DUNN

24 Attorney for Defendant Dante Rodgers

25 JEFFREY G. PITTELL

Attorney for Defendant

BY: ANDREW G. PATEL

G4decapc

(In open court)

THE DEPUTY CLERK: United States v. Capers.

Appearances by the government, please.

MS. LONERGAN: For the government, Jessica Lonergan.

With me at counsel table is United States Pretrial Services Officer Carlos Ramirez, who's here to address something with regard to one defendant, perhaps at the end of the proceeding.

THE COURT: Very well. Good afternoon both of you.

THE DEPUTY CLERK: Counsel for the defendants?

MR. PATEL: Good afternoon, your Honor. Andrew Patel for Mr. James Capers, who's in the blue.

THE COURT: Good afternoon to you, Mr. Patel.

And I note the presence of Mr. Capers in the jury box.

MS. TODD: Good afternoon, your Honor. Natali Todd for Tommy Brown, who's seated in the front row to the Court's right in the gray T-shirt.

THE COURT: Very well. Good afternoon, Ms. Todd.

I note Mr. Brown's presence.

MS. KUNSTLER: Good afternoon, your Honor. Sarah Kunstler. And I am here for Marquise Rochester, who is on the end here in the brown.

THE COURT: Good afternoon to you, Ms. Kunstler.

I note Mr. Rochester's presence.

MR. PATEL: Your Honor, I am Andrew Patel standing in for Jeffrey Pittell, P-I-T-T-E-L-L, for Mr. Edwin Moye, who's

G4decapc

1 in the front row, with consent of both Mr. Moye and Mr. Capers.

2 THE COURT: Mr. Moye, do you consent to having
3 Mr. Andrew Patel stand in for your attorney, Mr. Jeffrey
4 Pittell, today in this proceeding?

5 DEFENDANT MOYE: Yes.

6 THE COURT: Very well. Thank you.

7 MR. WALDREN: Good afternoon, your Honor. Edwin
8 Waldren for Christopher McKnight in place of Kelley Sharkey.
9 He's seated in the front row in the cream-colored shirt.

10 THE COURT: Good afternoon to you, Mr. Waldren.

11 And I note Mr. McKnight's presence.

12 MR. TOUGER: Good afternoon, your Honor. David Touger
13 for Mr. Unique Christopher, who's in the front row.

14 THE COURT: Good afternoon, Mr. Touger.

15 And I note the presence of Mr. Christopher.

16 MR. DUNN: Good afternoon, your Honor. Thomas Dunn
17 for Dante Rodgers. And Mr. Rodgers is directly in front of me
18 in the first row.

19 THE COURT: Good afternoon to you, Mr. Dunn.

20 And I see Mr. Rodgers in the front row.

21 MS. GREENWOOD: Excuse me, your Honor. Emma
22 Greenwood, the discovery coordinator.

23 THE COURT: Good afternoon, Ms. Greenwood.

24 Ms. Lonergan, what's the status of this matter?

25 MS. LONERGAN: Yes, your Honor. Since the last

G4decapc

1 conference we have obtained additional discovery, which we have
2 produced to Ms. Greenwood. I believe, although maybe she could
3 speak to it, that she has produced that to defense counsel, at
4 least some of it. And then my office is the IT department. We
5 have a number of drives that go to the jail. And they are
6 currently loading all the discovery on to the drive to go to
7 the jail. And I anticipate that we will be able to get those
8 out to the jail this week.

9 We do multiple copies to the jail so that there's
10 enough for all of the defendants to review. So it just takes
11 some time for our IT department to put all the discovery on to
12 the drives.

13 The reason this wasn't produced earlier is just it
14 wasn't in our possession.

15 THE COURT: And what's the volume of this discovery?
16 And where did it come from?

17 MS. LONERGAN: So, your Honor, as we continue to
18 investigate, we get more things. For example, we've gotten
19 additional jail calls that we've subpoenaed either from
20 additional facilities and also from the federal facilities.
21 Now that they've been incarcerated in the federal facilities,
22 we got the federal jail calls. So that's one of the things
23 we've turned over.

24 In addition, we got from the Bronx District Attorney's
25 Office, they had done a long wiretap investigation, which we

G4decapc

1 just recently obtained from them. It was about a year-long
2 wiretap investigation. It did not actually really focus on
3 these individuals. However, the Bronx District Attorney's
4 Office also sent with that a spreadsheet in which they listed
5 everybody that they believed had been intercepted on their long
6 wiretap investigation. One of the defendants' nicknames was on
7 that spreadsheet. I don't know, because if it's the same
8 person, but in the excess of caution, we have turned over that
9 long wiretap and told defense counsel who we believe could be
10 intercepted on that; again, which I believe is only one
11 defendant in this case.

12 And I believe that is the bulk -- again, for example,
13 as we continue to investigate, we do cell site applications.
14 We turn over the cell site applications. When we get the data
15 back from the telephone companies, we turn that over. Again,
16 without making -- I can't, of course -- as the investigation
17 goes on, things come up.

18 But it's my understanding at this point that I think
19 with the exception of if we continue to subpoena jail calls,
20 that this would be the last large production. Again, as we do
21 things like cell site orders or we get telephone records, those
22 are things that we would turn over to defense counsel. But
23 that should take less time for them to review than what's been
24 produced to date.

25 THE COURT: How many calls approximately were

G4decapc

1 intercepted in the Bronx, year-long wiretap?

2 MS. LONERGAN: Thousands. But again, your Honor, that
3 was really a case of a gang that primarily -- with respect to
4 the federal cases, the defendants who were more intercepted on
5 that were defendants in the companion case, the Taylor case.
6 And again, from my review of the materials, I think that, at
7 most, one of these defendants was intercepted, and that that
8 case was not -- I'm not even sure if those are things that we
9 would at this point seek to introduce. But, again, as soon as
10 we obtained it, we reviewed it and turned it over.

11 THE COURT: But if there's nothing that relates to
12 these defendants, you're not going to be offering it, are you?

13 MS. LONERGAN: If it doesn't relate to these
14 defendants, no, of course not. We would not be offering it.
15 But, again, I don't want to hold something which will take us
16 some time to go through thoroughly and not give it to defense
17 counsel, because I don't want to hold up their possibility of
18 looking at it.

19 And again, from our preliminary review -- and again, I
20 stress preliminary, because I didn't want it to sit in my
21 office for a long time before turning it over to defense
22 counsel. We reviewed it, all of the applications of the many
23 reups, as well as that spreadsheet, and the only name I saw
24 that I thought related to these defendants was one nickname.
25 And so we told defense counsel that, so to give them a little

G4decapc

1 bit of guidance with respect to going through those wires.

2 THE COURT: But you haven't confirmed whether that
3 nickname is actually the individual who's a defendant in this
4 case, right?

5 MS. LONERGAN: That's correct, your Honor.

6 THE COURT: What would be so hard about finding that
7 out?

8 MS. LONERGAN: Your Honor, it's honestly just
9 finding -- so what I have right now is I have the Bronx
10 District Attorney's Office's applications. So I have to go
11 look through or get -- ask law enforcement to look through
12 thousands of calls, find the one with the number associated
13 with that and then listen to it and hope that they can
14 potentially recognize the defendant's voice or not. I mean,
15 that will be done. Clearly we will tell defense counsel once
16 we've confirmed one way or the other.

17 THE COURT: Mr. Patel?

18 MR. PATEL: Your Honor, my understanding from
19 Ms. Greenwood's office is that we're talking about 68,000 phone
20 calls from 39 separate cell phones. Your Honor, my concern is
21 an individual who may have been intercepted may have standing
22 to object to the search or the interception. But who was
23 intercepted does not tell us who was discussed.

24 So there very well may be information -- and I have
25 used this to my clients' advantage in other matters, where

G4decapc

1 person A is talking to person B and says something that's very
2 helpful about my client. Sometimes they say things that's not
3 so helpful. But that's not going to show up on a spreadsheet
4 of who was speaking, unless someone actually goes through and
5 finds out by what name or nickname was actually being
6 discussed. We're talking about an amount of work here.

7 Essentially there were two indictments that were filed
8 simultaneously in the Southern District of supposedly,
9 according to the government, sort of two warring factions. And
10 so there may well be discussions in that wiretap on the other
11 group about people in this group. And we won't know until we
12 listen.

13 THE COURT: When did you get the material?

14 MS. LONERGAN: From the Bronx District Attorney's
15 Office? Within the last few weeks, your Honor.

16 MS. GREENWOOD: Your Honor, just to clarify --

17 THE COURT: Step up to the podium, Ms. Greenwood.

18 MS. GREENWOOD: Your Honor, to clarify what defense
19 counsel have received since the last status conference, my
20 office has received two global productions, being the fifth and
21 sixth productions respectively. All defense counsel have
22 received the fifth production. My office received the sixth
23 production on April 11th, just a couple of days ago.

24 We're still processing the material. So defense
25 counsel have not actually seen the sixth production.

G4decapc

1 The sixth production includes over 1,000 prison calls,
2 which I relayed to counsel. There was a cover letter that the
3 government provided to me along with that production. I shared
4 that cover letter with defense counsel. But to date, counsel
5 do not have those materials. I expect to be able to turn those
6 over to defense counsel by the end of this week.

7 And I should also mention that the fifth production,
8 which has been the topic of discussion so far today, included
9 about as much discovery volume wise as had been produced
10 before. So it basically doubled the discovery in this case.

11 So the fifth production was distributed to counsel on
12 March 25th. So defense counsel have had since March 25th to
13 review approximately 67 gigabytes of data.

14 And I should also mention that the sixth production,
15 which volume-wise is only 2.8 gigabytes -- relatively small
16 compared to the previous production -- is quite complex, which
17 I also relayed to counsel this afternoon as we had a chance to
18 review it. As I mentioned, there are the 1,000 prison calls.
19 There is also some other audio files that require a proprietary
20 player to play. So there's a little bit of learning curve, I
21 should say, to be able to listen to those calls, which we will
22 be helping defense counsel with.

23 THE COURT: Do you have that proprietary software in
24 place or not?

25 MS. GREENWOOD: Yes. The player was provided, as it

G4decapc

1 often is, by the government. What I meant was that my office
2 will be helping defense counsel if they're unfamiliar with how
3 to use it. Sometimes these players can be particularly
4 difficult to figure out how to work.

5 THE COURT: All right. Anything else?

6 MS. GREENWOOD: That's all, your Honor.

7 THE COURT: Thank you.

8 So, Mr. Patel, what do you want to do? Sounds like
9 you better get really busy, because I'm telling you right now,
10 I'm not moving the trial date. Because the government, they'll
11 be collecting things forever.

12 MR. PATEL: That's true, your Honor. But we need the
13 opportunity to review it.

14 THE COURT: Discovery was complete on January 29th,
15 right?

16 MR. PATEL: No.

17 THE COURT: And now they've come up with more?

18 MR. PATEL: Twice as much as they had before. I mean,
19 your Honor, it's like we're -- we can't be held as a moving
20 target that we have no control over. We're running as fast as
21 we can, but the base gets moved.

22 THE COURT: What do you want to do? I have five
23 defendants who are in custody.

24 MR. PATEL: And I think, your Honor, that we are in a
25 position that we can at least take some preliminary steps

G4decapc

1 towards moving the case forward and getting things ready.

2 Ms. Sharkey wrote a letter to your Honor asking for a motion
3 schedule. She is currently on trial in what I understand to be
4 an authorized capital case in New Jersey. And she requested
5 eight to ten weeks to file motions. I would join that request.

6 THE COURT: What motions are you going to file?

7 MR. PATEL: Your Honor, I've spoken with counsel for
8 Mr. Moyer. He will be filing a motion challenging the Facebook
9 and Instagram search warrants. We will be filing similar
10 motions. I've been having discussions with the government
11 about whether there will be identification motions and standard
12 suppression motions. Those discussions are ongoing, and I hope
13 that by that period of time we'll have an answer as to whether
14 or not the government will seek to introduce anything that was
15 actually taken from Mr. Capers.

16 THE COURT: Who else has motions that they want to
17 file?

18 Don't all sit there.

19 MR. WALDREN: Your Honor.

20 THE COURT: Otherwise, I'll assume you have no
21 motions. We'll just go.

22 MR. WALDREN: Your Honor, Ms. Sharkey anticipates
23 she's going to file motions to suppress statements, as well as
24 physical evidence.

25 MR. DUNN: I have no motions, your Honor.

G4decapc

1 THE COURT: Mr. Touger?

2 MR. TOUGER: I have no motions either.

3 MS. TODD: On behalf of Mr. Brown, I have no motions.

4 MS. KUNSTLER: Your Honor, based on the evidence I've
5 reviewed so far, I have no motions.

6 MR. TOUGER: I should probably qualify remarks to that
7 one. Based on what we have so far, I have no motions.

8 MS. KUNSTLER: I have not been able to -- the fifth
9 and sixth productions I have not reviewed. I started to open
10 all the files, or see if I could open all the files, on the
11 fifth production. I have done no substantive review of that
12 discovery yet.

13 THE COURT: Well, I don't know how long you think that
14 I'm going to wait for you to decide whether you can do
15 something more than just open the files.

16 MS. KUNSTLER: It took me a day -- actually took me
17 the better part of a day and a half to make sure I could open
18 all the files, because it is quite a lot of material. It's not
19 just opening a folder. It's making sure that you don't have to
20 then request new discovery, new productions of material.

21 THE COURT: So it took you a day and a half just to
22 make sure you could open the files, but you haven't looked at
23 them?

24 MS. KUNSTLER: I have started --

25 THE COURT: Why don't you listen to what you're

G4decapc

1 saying, because it sounds idiotic to me. We're trying this
2 case on November 28th. So get with the program.

3 MS. KUNSTLER: Your Honor, it is --

4 THE COURT: You've got a discovery coordinator. She's
5 available all the time.

6 MS. KUNSTLER: Two weeks ago we got 67 gigabytes of
7 material. Each of those gigabytes is the equivalent, I think,
8 of over 30,000 file boxes of information. So I have begun to
9 review this material, but it is quite a lot of material.
10 Making sure that we can open it, that our clients can open it
11 so they can review it with us, so it is in a format that we can
12 all review and that it is intelligible. It's important, as is
13 reviewing, but it is a great amount of --

14 THE COURT: Right. And it will be even a bigger chore
15 when you start to look at it.

16 I'm fixing a motion schedule in the case. The
17 defendants can file their motions on June 15th. The government
18 can respond by July 1. I'll take replies on July 12. And I'm
19 going to set the matter down for any suppression hearing on
20 July 18th at 10:00.

21 Any other issues relating to discovery?

22 MS. LONERGAN: Not from the government, your Honor.

23 THE COURT: If the government winds up discovering any
24 other amounts of material, I want a letter from the government
25 alerting the Court to it, with an explanation as to what is

G4decapc

1 going on.

2 MS. LONERGAN: Of course, your Honor.

3 THE COURT: What are the defendants' respective views
4 concerning the exclusion of time between now and July 18th?

5 MR. PATEL: No objection.

6 MS. TODD: No objection, your Honor.

7 MS. KUNSTLER: No objection.

8 MR. WALDREN: No objection.

9 MR. TOUGER: No objection.

10 MR. DUNN: On behalf of Mr. Rodgers, your Honor, no
11 objection.

12 THE COURT: All right. Since this continuance is due
13 to the government's continuing production of voluminous
14 discovery, the defendants' need to review the discovery, to
15 learn how to open the discovery and to make motions, I
16 prospectively exclude the time from now until July 18, 2016,
17 from Speedy Trial Act calculations. I find that this
18 continuance serves to ensure the effective assistance of
19 counsel and prevents any miscarriage of justice. Additionally,
20 I find that the ends of justice served by such a continuance
21 outweigh the best interests of the public and each of the
22 defendants in a speedy trial, pursuant to 18, U.S.C., Section
23 3161.

24 And I'm going to end this conference and turn to the
25 other matters with the individual defendants in a moment, but

G4decapc

1 I'm going to end it the way I started it. We have a firm trial
2 date in this case. We're going forward on that day. And if
3 you've only opened the government's discovery and you haven't
4 looked at it, it's fine. We're going to go forward with trial.
5 We'll see who blinks first.

6 Anything further from the government?

7 MS. LONERGAN: Not with respect to the overall case,
8 your Honor.

9 THE COURT: All right. At this juncture we have
10 issues with two defendants. I think that I'll take up the
11 matter relating to Unique Christopher last.

12 With respect to the defendant who was in custody,
13 Ms. Todd, did you want to be heard?

14 MS. TODD: Yes, your Honor. Thank you.

15 Your Honor, I submitted a letter to the Court
16 regarding Mr. Brown's medical issue, asking the Court to
17 consider releasing him on bail, specifically so he could be
18 attended to; because it is Mr. Brown's belief, as well as mine,
19 having reviewed his medical records, that he's not receiving
20 the appropriate treatment. And so the application to the Court
21 this afternoon is primarily based on the need for medical
22 treatment.

23 As the Court is aware by my submission, Mr. Brown was
24 shot a few weeks before his incarceration. That was on
25 August 21st of 2015, when he was shot in the back at very close

G4decapc

1 range. It is my understanding from Mr. Brown and from the
2 review of the medical records that the bullet is still lodged
3 in his chest area. From speaking with his mother, who is
4 seated in the audience, and also his father, who is present,
5 and Mr. Brown himself, it was their understanding from the
6 doctor at Jacobi Medical Hospital at the time that after the
7 wound had been sufficiently healed, that they would attempt to
8 remove the bullet. But as the Court is aware, he was arrested
9 in state court and then immediately, within two or three days,
10 transferred to MDC, where he has been incarcerated since the
11 inception of this case.

12 Mr. Brown has constant pain. He coughs up blood more
13 often than not. Although he has seen doctors, it is my
14 understanding from the records and from speaking to Mr. Brown
15 that it is not the intention of the medical staff at the Bureau
16 of Prisons to remove the bullet. The family wants it out. He
17 wants it out, because he has difficulty breathing on a daily
18 basis, where he expresses that he constantly is gasping for
19 breath. Even during a normal conversation it's intermittent.
20 And it comes and goes.

21 Judge, I understand that he is charged with what I
22 consider to be relatively serious crimes. He's charged in
23 Count One of the racketeering conspiracy and Count Three, which
24 is the narcotics conspiracy, where he faces, if he were to be
25 convicted, substantial period of time in jail. However, it is

G4decapc

1 a rebuttable presumption. And we believe under the statute the
2 exception in considering his medical records is substantial
3 enough for the Court to consider releasing him.

4 We're not asking that he simply be released, but under
5 the strictest of release conditions, including home confinement
6 with electronic monitoring, and that he's only allowed to go to
7 the doctor, and all the necessities as pretrial services see
8 fit.

9 He is not a flight risk. He has lived in the
10 community all his life. His mother is here. There are two
11 people who would be willing to sign, should the Court consider
12 releasing him.

13 I understand the government objects.

14 And so, Judge, based on all of the information that I
15 have provided to the Court, including some pages relevant to
16 his medical records, we're asking the Court to consider
17 releasing him for the purpose of getting treatment.

18 THE COURT: Thank you, Ms. Todd.

19 Ms. Lonergan?

20 MS. LONERGAN: Yes, your Honor.

21 Having spoken, or one of my colleagues having spoken
22 to the Bureau of Prisons, their medical staff does not believe
23 that it is necessary to remove the bullet. I'm not qualified
24 to make a determination one way or the other.

25 Nevertheless, should the bullet need to be removed, my

G4decapc

1 understanding is that the BOP has the capacity to do that;
2 perhaps not at MDC, but that there are BOP medical facilities.

3 So it seems to me that in the first instance, if
4 Ms. Todd wants to address this with BOP and see if she can talk
5 to the BOP doctors and ask them to change their minds about
6 removing the bullet, but to do that within -- then to figure
7 out, which I believe is true, whether or not it can be done
8 within the BOP facility, because --

9 THE COURT: The BOP advised me back on March 23 that
10 the defendant was going to have a chest CT exam. Did that
11 happen?

12 MS. LONERGAN: Your Honor, I'm not aware of whether or
13 not that happened.

14 THE COURT: Ms. Todd, did that happen?

15 MS. TODD: Yes, it did, your Honor. And the Bureau of
16 Prisons' position is still the same as it was several months
17 ago: That they don't feel the need to remove the bullet.

18 THE COURT: Well, I'm going to direct the government
19 to obtain a further report from the physicians at MDC regarding
20 Mr. Brown's condition, in view of their earlier representation
21 that once the results of the chest CT were available, Mr. Brown
22 would be sent to an outside consultant to make a determination
23 as to the appropriate treatment.

24 Do you know whether that happened, Ms. Todd?

25 MS. TODD: No, your Honor, I'm not aware. All I'm

G4decapc

1 aware is that he was sent to get a chest exam. And the
2 determination was the bullet is where it is, and they don't
3 feel the need to remove it. But nothing further.

4 THE COURT: I'm going to direct the government to make
5 that inquiry and submit a letter to me by next Monday.

6 MS. LONERGAN: Yes, your Honor.

7 THE COURT: With a full report from the doctors and
8 the outside consultant, if he has been seen by one.

9 So for now, the application to release the defendant
10 on some conditions is denied.

11 Turning to Christopher Unique, who wants to be heard?

12 MR. TOUGER: It's the government's application.

13 MS. LONERGAN: Yes, your Honor.

14 At this point I've spoken about the matter with
15 Pretrial Services Officer Ramirez. And if you'd like to hear
16 further from him, that's why he's here.

17 But based on the state arrest, which was for being in
18 possession of a knife -- and we understand, we know the state
19 court complaint was dismissed. But, nevertheless, that and the
20 defendant's continued use of marijuana, while not in itself
21 serious, nevertheless shows that he is not taking the
22 conditions of release seriously.

23 The government, however, is not seeking remand at this
24 time, because the government thinks that there is something
25 that is somewhat less restrictive that will adequately meet the

G4decapc

1 requirements of the statute. Having spoken with Officer
2 Ramirez, the government thinks that home detention with
3 electronic monitoring would be appropriate in this case, in
4 which the defendant would be at home, except for approved times
5 when he was allowed to be out of the home; for example, that
6 would be if he has a job; if he's -- education; to meet with
7 his lawyer; if he goes to religious services; things of that
8 nature.

9 What that would do, in the government's hope, is, for
10 example, to keep him from the kind of environments in which he
11 might think that it was good or important for his safety for
12 him to hold on to a knife or other weapons. Because my
13 understanding is that is what his explanation was to the NYPD,
14 is that he was carrying a knife for his safety. But if he's
15 not out at night unless approved -- the government does not
16 wish to keep him from working or doing something else
17 productive, but we think this would adequately balance the need
18 for safety of the community, as well as to keep the defendant
19 doing the positive things that he has been doing while on
20 pretrial release.

21 THE COURT: Mr. Touger?

22 MR. TOUGER: Your Honor, the government overstates the
23 situation immensely. First of all, the continued use of
24 marijuana.

25 He has tested negative for marijuana use since

G4decapc

1 January. So there's no continued use of marijuana. For three
2 months he's been perfectly clear from any marijuana use. And
3 prior to that, he did test positive on two occasions that
4 occurred back -- one in November, which was within two months
5 of his arrest, so that positive could have been from use prior
6 to his arrest; although it also could have been use after. We
7 don't know. And one later on, which was obviously a positive
8 result.

9 He's been performing very well at the Getting
10 Out/Staying Out program he's involved in. Mr. Ramirez, who's a
11 seasoned pretrial officer, has told me he's not seeking any
12 changes whatsoever. This is purely the government's motion,
13 not Mr. Ramirez' motion.

14 He has never been arrested before. He has no criminal
15 record. He's doing exactly everything the Court has told him
16 to do for the last three months. He did get arrested, but that
17 case was dismissed.

18 The failure to report, your Honor, is partly my fault,
19 I must admit. Because when he called me about it, I thought he
20 said that he was taken to the precinct and dismissed at
21 that point. So I didn't think he was charged with anything.
22 So I did not think it was as big a deal as it was. As it
23 turned out, I had misheard what Mr. Christopher told me. So
24 that's why there was some miscommunication with him
25 communicating that to his pretrial officer. So I take some of

G4decapc

1 the blame for that.

2 I don't think this change will serve any purpose
3 except costing taxpayer money for no reason whatsoever.
4 Mr. Christopher is doing everything the Court has asked him to
5 do.

6 THE COURT: Is he employed?

7 MR. TOUGER: He's working through this Getting
8 Out/Staying Out program, which I think you have a letter --

9 THE COURT: I do.

10 MR. TOUGER: -- before you. In the letter it says
11 Mr. Unique, to me, is always easygoing, kind, hardworking and
12 calm. It's been wonderful working with Mr. Unique.

13 I mean, this is a glowing letter, your Honor. I don't
14 see any need for a change, except for the clarification that
15 he's back living with his mother now, as opposed to living with
16 his grandmother, because his grandmother took very ill. And he
17 had to move back to his mother's apartment.

18 THE COURT: Is he employed?

19 OFFICER: Your Honor, can I respond?

20 THE COURT: Yes. I want to hear from you, Officer
21 Ramirez.

22 OFFICER: Thank you, your Honor.

23 I just want to point out to the Court that actually
24 there are a few changes that I want to clarify. The memo that
25 was sent to your Honor dated April 1st, it actually says that

G4decapc

1 he was arrested on September 3rd. It's the 8th of September.

2 There was a prior memo sent to your Honor, and I think
3 cc'ed to everybody else, indicating that there were two
4 positives back in the day, a few months back. One of them
5 actually came back, confirmed negative. And I had discussed
6 that with Mr. Christopher.

7 The case initially belonged to Officer Cudina, who was
8 very helpful in getting him into both Focus Forward, which your
9 Honor is aware of that program, and Getting Out and Staying
10 Out. When she left to probation, I took over the case. And I
11 realized that he was playing games with these positives,
12 whereby it was my opinion, based as the drug specialist for
13 pretrial services working there 25 years, what he was doing was
14 using a little bit of marijuana and flushing his system so that
15 he would get a negative on a confirmation.

16 I confronted him about this, actually right on the
17 same day he was going to Focus Forward graduation, and told
18 him, the nonsense stops now. I'm supervising you, not
19 Ms. Cudina. I know what you're doing. It stops.

20 Well, sure enough, shortly after that, his last
21 positive for use was January 12th. So there are two true
22 positives that we can say he's confirmed positive for using.
23 Since then, he was negative seven times for marijuana. We put
24 him on a random drug testing program.

25 There are complications. I'm stuck between a rock and

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1 a hard place, because I do agree with what the government's
2 saying and I do agree with defense counsel. That's why I'm
3 here before your Honor to express my opinion on what's going
4 on, and hopefully your Honor can decide.

5 The defendant was living with his grandmother and
6 aunt. And the Court had modified his bail conditions because
7 apparently living with his mother, from what I understand, was
8 not a good thing. She apparently has a prior history of using
9 drugs, if not even a present history of using drugs. However,
10 he recently was told to remove himself from his grandmother's
11 apartment by his aunt. His grandmother became ill and has now,
12 from my understanding, she's in some kind of rehab facility in
13 the Bronx.

14 The aunt now basically took over and told him to get
15 out. He had nowhere to live, so he's living with his mother.
16 I'm not crazy about him living with his mother, but he's got a
17 roof over his head and somewhere to sleep. I visited the home.
18 I didn't see anything particularly bad, but I wasn't crazy
19 about the fact that his mother looks like she is still using
20 drugs.

21 When the defendant came in in March, on the 2nd, which
22 I don't have here, he tested positive for opiates. The
23 confirmation came back negative. When I confronted him about
24 this opiate use, he told me his mother had given him Xanax,
25 which is an antidepressant, antianxiety medication, a

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1 benzodiazepine, not an opiate. So when it came back negative,
2 I couldn't hold that against him, but I warned him, no more
3 pills from mom, okay? Stay on the straight and narrow.

4 He's been working as a maintenance employee at Getting
5 Out recently. And he does supply me with pay stubs. So he's
6 working. He's attending this program called Getting Out and
7 Staying Out. They also call it GOSO for short. He's reporting
8 to me. He's testing negative. He's living with his mother,
9 which I'm not crazy about, but he's got somewhere to live.
10 He's not using marijuana, as far as I know.

11 But then he gets arrested, as your Honor is aware.
12 And that's why we memo'd the Court in March. He got arrested
13 for a knife. He told me he had it because he was using it for
14 his protection. What is disturbing as well was he was arrested
15 about 12:00 at night. So this was around midnight, little
16 bit -- shortly after midnight. Why he's in a cab, in his own
17 words, at midnight getting arrested for possessing a knife is
18 bothering. Troublesome.

19 So when the government informed me of the arrest --
20 and we got the notice right afterwards. It was true, he was
21 arrested. The case was subsequently dismissed. The defendant
22 did not tell me anything about the arrest. I called him a few
23 days later and said, you got arrested. Why didn't you call me?
24 I lost your number. I said, that doesn't fly with me. You
25 come to my office on Monday and you tell me that you lost my

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1 number and you got arrested.

2 So he came to my office on Tuesday. Tested him. He
3 was negative. He's doing okay. He's living with mom. Not
4 crazy about it. He's working. He's not using drugs. But he
5 was arrested.

6 So does a condition of electronic monitoring whereby
7 he stays home, curfew with electronic monitoring, make sense?
8 Yes. Because he would be home and not out in the street at
9 12:00 at night, doing God knows what, in a cab with a knife.
10 But does the Court need to impose that? It's up to your Honor.
11 I think he could be home at night. We could monitor that.

12 THE COURT: He works during the day, I take it?

13 OFFICER: During the day, basically 20 hours, possibly
14 a little bit more. So it's not something he needs to be out of
15 his home basically after 5:00 or 6:00. If he was placed on
16 electronic monitoring, not home incarceration, but a curfew of
17 some type, so that he has to be home from a period of time,
18 that's helpful, because we know he's not roaming the streets,
19 getting into trouble.

20 MR. TOUGER: Your Honor, my compromise was going to be
21 exactly that: That the Court set a curfew -- let's say 8:30 at
22 night; that he has to be home at 8:30. I think that's a --

23 THE COURT: Officer Ramirez, I was going to ask you
24 for a suggestion on a curfew.

25 OFFICER: I think a curfew -- leaving the house early

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1 in the morning, whereby the officer who would be supervising
2 him -- wouldn't be me; would be someone who does curfew -- on
3 electronic monitoring would adjust his schedule to allow him to
4 leave early enough -- and I understand it's only a half hour,
5 an hour from his home to his program -- I would guess somewhere
6 around 8:00 in the morning or 7:30 in the morning he would
7 leave, and then hopefully be home at a reasonable time; around
8 5:00 or 6:00. I think that is something that we can do at
9 pretrial. We can put a monitor on him.

10 It would not be onerous expense-wise for us to do
11 that. So we can afford to do that. And I think it's
12 productive in that we'd know where he was.

13 And also, so that your Honor is aware, as your Honor
14 just heard, he's doing really well. I don't know that locking
15 him up was the way to go, and that's what I shared with the
16 government. So I thought as a compromise, an electronic
17 monitoring with a curfew would possibly address their concerns.

18 MR. TOUGER: Your Honor, I would just suggest a later
19 curfew. I think that would be more efficient.

20 THE COURT: Why?

21 MR. TOUGER: Because of his home --

22 THE COURT: He's working 20 hours a week.

23 MR. TOUGER: Not necessarily because of work, your
24 Honor. It's more because of his home environment. It would be
25 better if he -- there is just --

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1 THE COURT: You start making that argument about the
2 home environment, you may not want to go that way.

3 MR. TOUGER: He's coping with that, your Honor.

4 So I would just ask that he have time to get something
5 to eat before he comes home. I would suggest if 8:30 is too
6 late for the court, 7:30 is something you may consider.

7 THE COURT: Ms. Lonergan, anything further from the
8 government?

9 MS. LONERGAN: I think everything's been adequately
10 shared. I don't see a reason for a curfew that's much later
11 than he would get home from work.

12 THE COURT: All right. Mr. Christopher, do you want
13 to stand, sir?

14 Mr. Christopher, I'm going to modify the conditions of
15 your pretrial release, all right? I'm going to impose
16 electronic monitoring on you, to be arranged by pretrial. And
17 you're going to be subject to a curfew. Your pretrial officer
18 will fix the precise time in the morning that you'll be
19 permitted to leave to go to your employment. And I'm going to
20 require you to be back in the apartment by 6:00 p.m.

21 Do you understand, sir?

22 DEFENDANT CHRISTOPHER: Yes.

23 THE COURT: And do you understand that if you test
24 positive for any opiates or marijuana or anything else, or you
25 have any other run-ins with law enforcement, that you're going

G4decapc

1 to be back before me, and that your liberty is going to be in
2 jeopardy?

3 DEFENDANT CHRISTOPHER: Yes.

4 THE COURT: Because I won't hesitate, if you don't
5 live up to your commitments, to remand you so that I know where
6 you are. All right?

7 You understand all that?

8 DEFENDANT CHRISTOPHER: Yes.

9 THE COURT: Very well.

10 MR. TOUGER: Could I have a moment to speak with my
11 client?

12 THE COURT: Yes.

13 Anything further?

14 MS. LONERGAN: Not from the government, your Honor.

15 THE COURT: Anything further from any of the
16 defendants?

17 MR. PATEL: I think not, your Honor.

18 MR. DUNN: No, your Honor.

19 THE COURT: Mr. Touger, I'm going to just ask you to
20 take a seat for a moment, if you would. Everyone is to remain
21 seated while the defendants are escorted from the courtroom.

22 Have a good afternoon.

23 (Adjourned)
24
25